

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:

Clyde Lorenzo Miller and Peggy Mea Miller,

Debtors

Case No. 23-00278-dd

Chapter 13

OBJECTION TO CONFIRMATION

AutoMoney Inc. (“AutoMoney”) a secured creditor in the above captioned case, by and through its undersigned attorney, hereby files its Objection to Confirmation of the Debtor's Plan (“Objection”), on the following grounds:

Statutory Basis

1. This Court has jurisdiction of this proceeding under 28 U.S.C. §157(b)(2)(G).
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1408 and § 1409
3. The statutory predicates for relief are 11 U.S.C. § 506, 1323, 1325; Federal Rules of Bankruptcy Procedure 3015; and Local Bankruptcy Rules 3015-1, 3015-2, 3015-3.

Facts

4. AutoMoney is a creditor in the above captioned case and has a secured claim in the amount of \$ 7,337.86.

5. AutoMoney’s claim is secured by a properly perfected lien against the Debtor’s vehicle a 2010 Ford F150 (“Vehicle”). See **Exhibit A**.

6. Through the Plan filed on January 31, 2023 (“Plan”), the Debtors are asserting the Vehicle has a value of \$ 6,195.00.

7. The proposed Plan attempts to pay AutoMoney \$122 per month until the secured portion of the claim is paid in full.

8. According to the KBB value, the Vehicle has a current value of \$8,322. See **Exhibit B** attached hereto.

9. The KBB value indicates that the Debtors have undervalued AutoMoney’s collateral by \$ 2,127.

Argument

10. AutoMoney is objecting to the confirmation of the Plan Plan because it proposes to under pay AutoMoney for its secured claim, and as such does not comply with 11 U.S.C. § 1325(a)(5).

11. The Debtor's valuation is lower than the actual market value of this Vehicle and should not be accepted.

12. 11 U.S.C. § 506(a)(2) states that an allowed secured claim is allowed . . . “to the extent of the value of such creditor’s interest in the estate’s interest in such property . . .”

13. “Section 1325(a)(5)(B)(ii) requires the court to determine the value of property to be distributed under the plan, as of the effective date of the plan.” [8-1325 Collier on Bankruptcy P 1325.06](#)

14. AutoMoney asserts that the Plan are not providing its “value” under the proposed Plan.

15. Because Plan, as drafted, does not comply with 11 U.S.C. § 1325(a)(5) it cannot be confirmed.

WHEREFORE, Movant respectfully requests that after such notice and hearing as this Court deems appropriate, the Court deny confirmation of the Plan, or in the alternative direct the Debtor(s) to amend the Plan to conform to this objection, and to award any additional relief as the Court may deem proper.

Markham Law Firm, LLC

Date of Service: March 10, 2023

/s/Sean Markham
Sean Markham, I.D. # 10145
Attorney for AutoMoney Inc.
P.O. Box 101
Mount Pleasant, SC 29465-0101
Tel: 843-284-3646
sean@markhamlawsc.com

Exhibit A

Lien



Electronic Title Copy

Vehicle ID Number	Year	Make	Model	Body Style	Lic Plate	Reg Exp
1FTFW1CV7AKE07082	2010	FORD	F150	PK		

Weight	New/Used	Title Number	Odometer	State	Date Issued
5048	Used	1110409100894	249331	SC	08-17-2021

Vehicle Color

Full Name of Owner(s)
CLYDE LOREN MILLER
7330 HARVEST RD
REMBERT, SC 291288567

Liens(s)
AUTOMONEY INC OF SUMTER
864 BROAD ST
SUMTER, SC 291502563

Lien Date: 08-09-2021
ELT Number: 032677823
LTN: 7744

* Information has been supplied by the lienholder, not the state titling agency.

Document ID: IMC8LJ0ACN

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LOAN AGREEMENT, PROMISSORY NOTE AND SECURITY AGREEMENT

Borrower/Debtor's Name CLYDE LORENZO MILLER		Co-Borrower's Name		Contract Number 7865
Borrower/Debtor's Address (Residence) City, State, Zip [REDACTED] REMBERT, SC 29128			Time Made 9:33 AM	Date Made 11/12/2021
Identification Type and Number [REDACTED]		Cell Phone [REDACTED]	Work Phone	D.O.B. [REDACTED]
Creditor/Lender AutoMoney, Inc. of Sumter		Address, City, State, Zip 864 Broad St. Sumter, SC 29150		
Year 2010	Color white	Make Ford	Model F150	
Vehicle Identification Number 1FTFW1CV7AKE07082		Title Certificate Number 772010382744578	License Number hv14502	
Federal Truth-in-Lending Disclosures				
ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate. 99.999%	FINANCE CHARGE The dollar amount the credit will cost you. \$15,279.82	AMOUNT FINANCED The amount of credit provided to you or on your behalf. \$7,015.00	TOTAL OF PAYMENTS The amount you will have paid after you have made all payments as scheduled. \$22,294.82	Itemization of Amount Financed \$ 7,000.00 Amount given to you directly Amounts paid to Others on Your Behalf \$ 15.00 DMV for Lien Fee \$ 0.00 Amount Refinanced \$ See Below to Others \$ 7,015.00 Total Amount Financed
Maturity Date 11/12/2024	SECURITY: You are giving a security interest in your vehicle. PREPAYMENT: You may pay your loan off early without a prepayment penalty. See your contract details contained herein for any additional information.			
Number of Payments 36	PAYMENTS Due MONTHLY Beginning on: 12/12/2021	Number/Amount of Payments 35 payments of \$619.29 1 payment of \$619.67		

APPLICABLE LAW, JURISDICTION, VENUE: This Loan Agreement, Promissory Note and Security Agreement (the "Agreements") are entered into by and between Creditor/Lender ("Lender") and Borrower/Debtor and Co-Borrower (collectively, the "Borrowers" or "you") in South Carolina as of the above date, subject to the terms and conditions set forth herein and any and all representations Borrowers have made to Lender in connection with these Agreements. You acknowledge and agree you voluntarily entered into South Carolina, you entered into the Agreements in South Carolina, the Agreements are to be performed in South Carolina, and the Lender is a regulated South Carolina consumer finance company. Therefore, the Agreements shall be interpreted, construed and governed by and under the laws of South Carolina, without regard to conflict of laws principles (whether of South Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than South Carolina. In the event that any dispute whatsoever arises between Lender and Borrowers in relation to or in any way in connection with the Agreements (a "Dispute"), the Dispute shall be brought exclusively in the courts of competent jurisdiction located in South Carolina, and the Agreements are subject to the exclusive jurisdiction of the state and federal courts located in South Carolina. The parties knowingly, voluntarily and irrevocably consent to jurisdiction and venue in South Carolina and waive any argument as to *forum non-conveniens*.

Borrower [Signature] INITIAL Co-Borrower _____ INITIAL

PROMISSORY NOTE: Borrower and Co-Borrower, jointly and severally, promise to pay to LENDER, the Principal amount of the loan (the Amount Financed), plus all interest, fees and charges due in accordance with the payment schedule listed above and all other charges that may become due in accordance with the terms of this agreement, until paid in full. You promise to make payments on or before the same day of each month as the first payment due date and if there is no same date, then the last day of the month. Lender is a lender licensed South Carolina consumer finance company operating in accordance with South Carolina law and regulated by the SC Board of Financial Institutions, 3rd Floor, Edgar Brown Building, 1205 Pendleton St., Columbia, SC 29201. Phone number: 803-734-2020, website: <https://www.bofi.sc.gov/Pages/default.aspx>.

[Signature]

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INTEREST: This is a Simple Interest Loan, early payment will decrease the amount of the finance charge and late payment will increase the amount of the finance charge. The contract interest rate as calculated in accordance with South Carolina Regulations is 100.165 % per year.

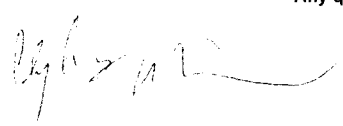
PREPAYMENT: If you pay off early, the total amount of Finance Charge will be decreased. There is no Prepayment Penalty. The amount due on prepayment will vary depending upon the unpaid principal balance at the time of prepayment. If you choose to rescind the Agreements within 24 hours you may return the Amount Financed, and there will be no Finance Charge incurred.

SECURITY AGREEMENT, USE OF VEHICLE AND INSURANCE: You have requested a loan (the "LOAN") in the amount of the Amount Financed stated above (the "Principal".) At your specific request, we, as LENDER, do hereby advance to you the Principal amount. To secure repayment of all the amounts owing hereunder, you have granted to LENDER a security interest in your motor vehicle described above and all parts and accessories which now or hereafter constitute accessions to your vehicle and in all proceeds of such vehicle and accessions. This security interest secures all obligations, which may become due under this Agreement. Provided you do not default in the payment of any monetary sums due under this Agreement or fail to fully perform pursuant to this Agreement, you may retain physical possession, ownership and use of the motor vehicle. You shall bear the entire risk of loss or damage to the vehicle while it is in your possession, and injuries to yourself, third parties and property arising from your operation of the collateral, including but not limited to, all judgments, attorney's fees, court costs and any other incurred expenses related thereto. You agree to keep the vehicle free of all delinquent taxes and liens, except the security interest under this Loan Agreement, and not to use the vehicle illegally, improperly, or for hire. You agree not to make a material change in the vehicle or transfer any interest in the vehicle, without our written consent and not to subject the vehicle to seizure by a law enforcement agency. You agree to keep your vehicle insured in favor of us with a policy reasonable satisfactory to us for collision coverage and comprehensive or fire, theft and combined additional coverages in amounts not less than the unpaid sums owed under this Loan Agreement or the insurable value of your vehicle, whichever is less. You may obtain property insurance from anyone you want that is acceptable to us. Any policy of insurance shall be endorsed to show us as a loss payee and shall provide that we receive not less than 10 days prior written notice of cancellation. You agree that we can use any proceeds from insurance to repair or replace your vehicle. If the unpaid amount owed on this Loan Agreement has been lawfully declared due at the time, at our option, we may instead apply the insurance proceeds to reduce what you owe under this loan Agreement.

APPRAISAL AND INCOME INFORMATION: The loan amount established for your Account is based upon your income and upon the value of the Collateral. You further agree we have the right to reappraise the Collateral and/or demand proof of your current income from time to time upon reasonable notice. You agree to provide access to the Collateral at an agreed upon location during normal business hours and within a reasonable amount of time after demand. You further agree to immediately inform us of any significant changes in your circumstances regarding your income or the value or the condition of the Collateral, including but not limited to any damage occurring to the collateral or any significant change in its mechanical condition.

EVENTS OF DEFAULT: Any of the following constitutes a default under this Loan Agreement, as permitted by applicable law: (i) we do not receive any payment when due; (ii) you break any of your promises herein; or (iii) our prospect of payment, performance or realization of collateral is significantly impaired, which may include: (I) you fail to perform any obligation under this Loan Agreement or any other agreement with us; (II) any information furnished in connection with this Loan Agreement proves to have been false or materially misleading; (III) you sell or transfer your interest in the motor vehicle; (IV) you generally fail to meet debt obligations as they become due; (V) any proceeding is commenced or petition filed under any bankruptcy or insolvency law by or against you; (VI) you fail to maintain any insurance policy required hereunder; (VII) the motor vehicle is levied upon or seized under any legal process; and (VIII) the motor vehicle is lost, stolen, or suffers substantial damage.

RIGHT TO CURE DEFAULT, OTHER NOTICES AND UPDATING ADDRESS: Pursuant to SC Code Ann. Sec 37-5-111, you shall have twenty (20) days following notice of the right to cure a payment default to cure any missed payment before we accelerate the payment of the entire loan. All notices will be sent to your address on file. You hereby agree to report any name, address or telephone change immediately to us. Unless otherwise required by SC Statute or other applicable law, any other notices that we as LENDER are required to provide you pursuant to the Agreement and/or the Uniform Commercial Code of the State of South Carolina will be deemed reasonable if sent to you at the address set forth by you above at least (10) days before the event with respect to which notice is required.



Contract Number 7865

RIGHTS AND REMEDIES UPON DEFAULT: If you default under this Loan Agreement and fail to time cure as provided by law, we can demand that you pay all you owe under this Loan Agreement at once. We have all rights, options, and remedies of a secured party under applicable laws and under this Loan Agreement, including without limitation (i) demanding delivery of the motor vehicle to us without resorting to legal process, and (ii) foreclosing upon the lien which may include the taking physical possession of the motor vehicle regardless of where same may be located and thereafter liquidating the motor vehicle to fully cure and repay the (I) outstanding principal, all accrued and unpaid interest and fees, and (II) all costs or charges incurred by us in foreclosing upon the lien, including the repossession sale, and/or liquidation of the motor vehicle. Further, you expressly grant us an irrevocable power to act as your attorney-in-fact to execute any and all documents necessary to effectuate the liquidation of our lien, including the repossession, sale and/or liquidation of the motor vehicle by us in satisfaction of our lien in accordance with this Loan Agreement.

RETURNED CHECK FEE: Pursuant to S.C. Code Ann. Sec. 34-11-70(a)(3), you will be charged an amount not to exceed \$30 if any check, draft, or other order given by you or any other person as payment on this loan is not paid because the maker or drawer did not have an account with or sufficient funds on deposit with the bank or the person upon which it was drawn when presented or the draft check or other written order has an incorrect or insufficient signature on it. We will pursue all legal remedies on returned funds.

ASSIGNMENT: We may assign or transfer this Loan Agreement or any right hereunder. Your obligation under this Loan Agreement cannot be assigned by you to a third party without prior written consent from us.

BORROWERS REPRESENTATIONS AND WARRANTIES: You represent and warrant to us that (i) All information contained in your credit application and contained in this Loan Agreement about you is true and correct; (ii) you are the owner of the vehicle being pledged as security and you hold a clear and unencumbered title to this vehicle unless otherwise disclosed to us; (iii) you have disclosed all and any outstanding liens that may be in process and would affect your ability to deliver a clear title to the vehicle to us; (iv) you will keep the vehicle free of any liens or encumbrances, except for the security interest under this Agreement; (v) you are not a debtor under any proceedings in bankruptcy, insolvency, or reorganization and you have not filed nor had filed on your behalf a bankruptcy action within the past 90 days, and (vi) you have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code on or before paying this Loan Agreement in full; (vii) you have the ability to repay the loan under its repayment terms; (viii) you have provided us current documentation of your income.

Borrower CLM INITIAL Co-Borrower _____ INITIAL

DO NOT SIGN THIS AGREEMENT BEFORE YOU HAVE READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU WILL RECEIVE A COMPLETE COPY OF THIS DOCUMENT.

THIS IS A HIGH INTEREST LOAN. YOU SHOULD GO TO ANOTHER SOURCE IF YOU HAVE THE ABILITY TO BORROW AT A LOWER RATE OF INTEREST. YOU ARE PLACING YOUR VEHICLE AT RISK IF YOU DEFAULT ON THIS LOAN.

Date: 11/12/2021

I acknowledge the receipt of \$ \$7,000.00

Borrower [Signature]

Co-Borrower _____

Witness/Lender [Signature]

ITEMIZATION OF AMOUNT FINANCED

Check #	Pay To	Amount
014	CLYDE MILLER	\$7,000.00
015	SC DMV	\$15.00

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ADDITIONAL TERMS and DISCLOSURES

**THIS IS A HIGH INTEREST LOAN. YOU SHOULD GO TO ANOTHER
SOURCE IF YOU HAVE THE ABILITY TO BORROW AT A
LOWER RATE OF INTEREST.**

YOU ARE PLACING YOUR VEHICLE AT RISK IF YOU DEFAULT ON THIS LOAN.

A. Acknowledgment:

Borrower acknowledges receipt of:

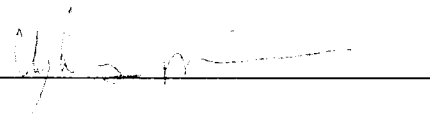
- 1) A completed duplicate of this Loan Agreement, Promissory Note and Security Agreement
- 2) The Additional Terms and Disclosure Statement before signing it,
- 3) A copy of South Carolina's Consumer Rights Handbook, Lender's Privacy Policy.
- 4) Each Borrower has read, understands and agrees to the terms and conditions set forth above and herein.

B. Authorization to Verify Information

You authorize us and our agents to verify the information about you contained in your credit application or contained in this Loan Agreement through any source.

ate: 11/12/2021

Borrower



Co-Borrower

Witness/Lender

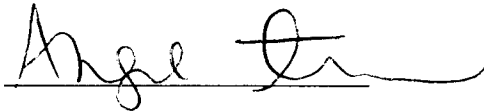


Exhibit B

Valuation Source

[Home](#) > [What's My Car Worth?](#) > [Category & Style](#) > [Options](#) > [Offer Options](#) > [Condition](#) > **King Ranch Pickup 4D 5 1**


Advertisement

My Car's Value
2010 Ford F150 Supercrew Cab King Ranch Pickup 4D 5 1/2 ft



4.5 ★ (982 Ratings)

[Edit options](#) [Write a review](#)

 Recalls: **1 Recall Found**
[Is my car affected?](#) [→](#)

Repair Estimator: **See Pricing**
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Options Next Steps

1 **Your Options**

- Instant Cash Offer
- Trade-in
- Private Party**
- Donate Your Car



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① Important info
& definitions

Value valid as of **03/10/2023**

Factors That Impact Value

Check that yours are correct below.

Condition: 

Mileage: **285,543**  ZIP Code: **29128** 

Why Sell Your Car Yourself?

- Make more money!
- Reach millions of buyers
- Our tools make it easy
- One-time charge of \$49



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